



INFORMATION SHEET

Serving the People of California

TAXICAB INDUSTRY

Taxicab drivers generally operate taxicabs under one of three situations. First, the taxicab drivers are acknowledged employees of the taxicab company. As an acknowledged employee, the taxicab driver performs his or her services under the direction and control of the taxicab company. Second, taxicab drivers perform services as either "percentage of their receipts" lease drivers or "fixed-fee" lease drivers. Lastly, there are taxicab drivers who own and operate their own taxicabs and pay for their own license, permits and insurance. These drivers are usually in business for themselves.

Who is an Employee?

An employer-employee relationship exists when a person who hires an individual to perform services has the right to exercise control over the manner and means by which the individual performs his or her services. The right of control, whether or not exercised, is the important factor in determining the relationship. See Information Sheet: "Employment" for the other factors used in making a common-law employee determination.

The taxicab industry lends itself to employment relationship with most taxicab drivers who lease taxicabs because the drivers:

- Do not own the vehicle and therefore cannot have a substantial investment in a business.
- Are not subject to an entrepreneurial risk of loss.
- Are not involved in a distinct occupation or business of their own.
- Perform work that is a regular part of the taxicab company's business.
- Can be terminated without liability by terminating or not renewing a lease agreement.

The direction and control test is the most important, but not the only, test used in determining whether an employment relationship exists. In Santa Cruz Transportation, Inc. v. Unemployment Insurance Appeals Board [(1991) 235 CA 3d 1363; 1 Cal Rptr 2d 64] the court pointed out other factors that were evaluated. In addition to determining the company exercised direction and control over the drivers, the court evaluated the following factors in order to establish that an employment relationship existed between the company and the taxicab drivers:

- The company owned the taxicabs.
- Performing the services was contingent on the company's ability and desire to provide a taxicab.
- The license and permits needed to operate the taxicabs were owned by the company.
- The company advertised their phone number on the taxicabs and the public contacted the company for taxicab services.

- Operating a taxicab does not require the expertise of a professional person.
- The drivers were working as part of the company's regular business and they did not furnish an independent business or professional service relative to the company.
- The company was in the transportation business.
- The drivers depended on the company's dispatcher for their livelihood.

Drivers who lease taxicabs based on a percentage of their receipts

The California Unemployment Insurance Appeals Board has held taxicab drivers to be employees under the following circumstances: the drivers pay a percentage of what they earn to a company in order to lease a taxicab. The taxicab company's income is dependent on how much revenue is generated by the driver. Therefore, in an attempt to increase income, a company will place controls and requirements on the drivers. The company may assign shifts, require the maintenance of trip sheets and pay for all advertising. At the same time, the drivers do not have a substantial investment in a business, are not subject to an entrepreneurial risk of loss, and do not have a distinct business of their own. The work the drivers perform is a regular part of the taxicab company's business and they can terminate or be terminated without any liability.

Drivers who lease taxicabs on a fixed-fee basis

In the Santa Cruz Transportation decision, the court held that the drivers who paid the taxicab company a fixed-fee to lease a taxicab were employees of the company. Therefore, any fixed-fee lease driver who operates in a manner similar to the drivers described in the Santa Cruz Transportation decision would be employees. Refer to the attached chart that lists the factors cited in the court decision and the weight we anticipate the California Unemployment Insurance Appeals Board and the courts will give to each.

Governmental Requirements

Local governments can require a taxicab company to exercise certain controls over the drivers, such as: requiring each driver to wear a uniform, maintain daily logs and waybills, and prohibiting a driver from using the vehicle for personal use. Any requirement from a local government indicates employment, but this factor alone is not enough to establish an employer-employee relationship. If the Government places requirements on the drivers, those factors would be considered control factors. However, in order to establish an employment relationship the government requirements must be combined with other employer control factors.

Each key factor as identified by the Court in the Santa Cruz Transportation, Inc., is analyzed and weighted by the Department in the chart below:

KEY FACTORS IN THE SANTA CRUZ TRANSPORTATION CASE

The terms of the lease allowed the company to terminate the drivers.

The drivers could be terminated under the lease agreement if they did not maintain good relations with the public.

The lease agreement designated the time period when the shift began and ended.

The drivers were required to schedule their meal breaks with the dispatcher.

The drivers were prohibited from using the taxicab for personal use.

The drivers were required to accept charge slips from certain customers.

The drivers were required to conform to a dress code.

The drivers were required by the company to account for fares they received by a daily trip sheet and there was no evidence that the city required the drivers to maintain trip sheets.

The work did not require the expertise of a skilled professional.

WEIGHT GIVEN TO FACTORS IN THE SANTA CRUZ TRANSPORTATION CASE

The right to terminate at will is strong evidence of employment. The right to terminate conveys an inherent power of the company over the driver. The company could choose not to renew the lease of a driver without advance notice or liability. This would be strong evidence of an employment relationship and would be given **high** weight.

The company exercised control over the actions and behavior of the drivers by requiring them to always have a good relationship with the public. Failure to do so would result in the termination of the driver. With this right, the company can demand many things of the driver, and the driver, fearing loss of his or her job, would be obliged to follow such demands. **High** weight would be given to this factor.

When the drivers are not allowed to set their own hours of work, the company is directing and controlling their services. This factor is given **medium to high** weight.

Shift drivers can either lease a taxi for 12 hours a day or 12 hour shifts over a period of a week. The shift leases allow for taxicabs to be leased when they are available for the shift requested. Therefore, the drivers cannot set their own hours and are not free to work when they choose.

If the dispatcher has control over when breaks are taken, this is strong evidence of control over the drivers and would be given **high** weight as an employment factor. If the drivers are required only to give notice of breaks to the dispatcher, the factor would be given a **low** weight.

The company controlled the use of the taxicabs by the drivers. This factor would be given **medium** weight.

The company exercised control over the services by requiring the acceptance of alternative methods of payment. This was evidence that the company had the right to control the services, and that right was complete and authoritative. This alone is strong evidence of an employer-employee relationship and is given **high** weight.

A specific dress code, such as the wearing of uniforms, is given **high** weight and is strong evidence of employment. A general dress code, e.g., "neat appearance" would be given **low** weight.

Required reports are viewed as "review of work" which is strong evidence of the taxicab company's right to control the drivers. This factor is weighted **high** as an indicator of employment. Having drivers complete city or governmental agency required reports is a factor given **low to neutral** weight.

Operating a taxicab does not require a high level of technical skill and this factor would be given **high** weight. A lower level of technical skill is strong evidence of employment.

The drivers did not advertise their services.

If the company holds itself out as a taxicab service and does all advertising, this would be strong evidence that the drivers are working in the furtherance of the company's business and would be given **medium to high** weight.

The taxicab company operates a fleet of cabs for public carriage.

The taxicab company was in the business of providing taxicab services, not leasing taxicabs. By driving the company's taxicabs, the drivers were performing services in the direct furtherance of the company's business. This factor would be given **high** weight.

The taxicab company's name was on the taxicab.

The company's name on the taxicab was an indication of employment and is given **medium to low** weight. The company's name on the taxicab is an indication the driver is performing services in the furtherance of the company's business.

The lessee's work is part of the regular business of the taxicab company.

The drivers' services were performed as an integral part of and in direct furtherance of the company's business which indicates employment. **High** weight would be given to this factor.

The taxicab company owned the taxicab.

The drivers did not have a significant investment in providing their services (i.e., own their cab, own medallions or the permits necessary to operate, etc.). This was strong evidence of employment and is given **high** weight. A daily lease is not considered a significant investment and does not create an entrepreneurial risk of loss associated with an independent contractor.

The taxicab company owned the municipal taxicab license.

The drivers operated under the company's license. This is a factor receiving **high** weight as evidence of employment.

The drivers depended on the company's dispatcher for their livelihood.

If the drivers are required to use the company's dispatcher in order to secure business, this is strong evidence that the company is controlling the services performed by the drivers. This factor would be given **high** weight.

The customers called the taxicab company for taxicab services; and

If the customers generally secure the services of the drivers through the company, this would be an employment factor as the drivers depend on the taxicab company for business. This factor would receive **high** weight. If the drivers could secure business on their own and could accept or reject referrals from the company dispatcher, this would receive a **lower** weight.

The taxicab company arranged for the performance of the services.

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